

**UNITED STATES OF AMERICA  
BEFORE THE  
DEPARTMENT OF ENERGY**

<b>Interstate Electric Transmission System</b>	)	
	)	<b>Notice of Inquiry</b>
<b>Electric Reliability Issues</b>	)	

**COMMENTS OF  
PUBLIC SERVICE ENTERPRISE GROUP**

Pursuant to the Department of Energy's (DOE) Notice of Inquiry<sup>1</sup> on Electric Reliability Issues, Public Service Enterprise Group Incorporated (PSEG) is pleased to submit the following comments.

**Identity of PSEG**

PSEG is an exempt public utility holding company engaged in, among other things, the purchase, generation, transmission and distribution of electric energy through regulated and non-regulated subsidiaries. PSEG's subsidiaries own and operate a number of generating stations and transmission lines, purchase electricity from various sources and provide electricity service to over 1,860,000 retail customers in an area extending from the Hudson River opposite New York City, south to the Delaware River at Trenton, and west to Camden, New Jersey. PSEG also provides wholesale transmission and bulk power sales service to surrounding regions. PSEG's domestic regulated operating public utility, Public Service Electric and Gas Company (PSE&G), is a member of PJM Interconnection, LLC, commonly known as the PJM ISO. This ISO coordinates the electric system loads, electric generating capacities and electric transmission facilities of its members, and is the largest power market in the United States, serving a combined peak load of approximately 50,000 megawatts, about 8 percent of the Nation's total.

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<sup>1</sup> Department of Energy, Notice of Inquiry, 65 *Fed. Reg.* 69753 (November 20, 2000) (NOI).

## **Executive Summary**

PSEG commends the DOE for its focus on preserving the reliability of the bulk power system. PSEG shares the DOE's concern that, with the transition to competitive electricity markets, the system of voluntary reliability self-regulation by the electricity industry which has worked in the past may not be adequate to meet the growing demands placed on the bulk power system. For this reason, PSEG supports the establishment of a mandatory electricity reliability regime featuring enforceable reliability rules, **but only as an important component of comprehensive restructuring legislation.** The DOE correctly sought comprehensive electric restructuring legislation several years ago. PSEG agrees with the DOE's Power Outage Study Team's (POST) conclusion that "a piecemeal approach that treats reliability in isolation would compromise reforms needed in other arenas linked to reliability (e.g., more efficient markets, regional operations of grids)."

Further, PSEG maintains that bulk power system reliability is a function of physical generation and transmission infrastructure development and operational prowess. Neither stand-alone reliability legislation nor FERC rules alone can solve the pressing need to encourage the construction and improvement of infrastructure – the fundamental bedrock from whence reliability arises.

PSEG acknowledges that a reliability code of conduct enforced by the Federal Energy Regulatory Commission ("FERC"), extending to all market participants and all owners of transmission, should ultimately replace the existing voluntary system designed for a different era. However, PSEG submits that the NERC "consensus" reliability legislation touted as the legislative solution is significantly in need of updating and revision. Preferably, a comprehensive bill would include a reliability provision that:

- Clarifies FERC authority over reliability and expands FERC reliability jurisdiction to all entities participating in the bulk power market, and
- Directs FERC to defer to standards developed under a process consistent with the provisions of the National Technology Transfer and Advancement Act of 1995, as implemented by OMB Circular A-119, to assure fairness and due process to all market participants and interested parties.

PSEG suggests that immediate legislature action is not required since, in the interim, other reliability compliance and enforcement mechanisms are being implemented. For

instance, the Western Systems Coordinating Council (WSCC) Reliability Management System and a similar Mid-Atlantic Area Council (MAAC) are currently developing reliability mechanisms. Even NERC, which has been avowing a critical need for reliability legislation for years, is implementing its own “Plan B” contract-based standards compliance and enforcement mechanism as an alternative to stand-alone reliability legislation. Such contract and tariff mechanisms could easily be adopted throughout North America and will prove sufficient for reliability compliance and enforcement until well-reasoned comprehensive legislation is enacted.

### COMMENTS

#### **I. Reliability Legislation Should Be Part of a Comprehensive Legislative Package**

As stated above, PSEG supports the establishment of a mandatory electricity reliability regime featuring enforceable reliability rules, but only as an important component of comprehensive restructuring legislation.

Indeed, the DOE’s POST report, in endorsing creation of mandatory reliability standards:

Industry-led voluntary reliability standards for bulk power system operation and planning have worked effectively since their inception. These efforts are the logical and appropriate starting point to change from voluntary to mandatory standards. The federal government should continue its support for this evolutionary process by authorizing the creation of a self-regulated reliability organization with federal oversight to ensure compliance with reliability standards. **However, this effort should not be undertaken in isolation. It must be treated as an integral element of a comprehensive plan for restructuring the industry. A piecemeal approach that treats reliability in isolation would compromise reforms needed in other arenas linked to reliability (e.g., more efficient markets, regional operations of grids).**

POST report at 65. PSEG concurs and reiterates that the reliability issue will not be solved solely with passage of reliability legislation.

There are other issues that need legislative guidance in a comprehensive bill. For example, it is not now clear whether the States or the FERC have the fundamental authority to

set retail transmission rates. The States have exercised this power for a century, but FERC, bolstered by the courts, has recently claimed much of it. Stand-alone legislation and establishment of mandatory reliability rules will not resolve this key issue.

Moreover, under FERC Orders 888, 889, and 2000, FERC lacks wholesale transmission jurisdiction over about one quarter of the U.S. transmission grid, i.e., that portion owned by unregulated entities such as municipal utilities, co-operatives, Power Marketing Administrations and the TVA. Reliability-only legislative (or regulatory) action would not fill this key gap. Moreover, reliability regulations promulgated under FERC's existing authority presumably would not bind non-jurisdictional entities, whose participation is an important component of a functional reliability system.

Finally, it may be time to consider new approaches to the siting of new transmission lines, and to reconsider the need for a federal role, especially as transactions over the grid become increasingly regional and interstate in nature. Unless new transmission facilities can be sited in an expeditious fashion, reliability inevitably will suffer. The events of recent weeks in California provide the dramatic evidence of the interdependence of these issues, and the reasons why a piecemeal approach ultimately will not guarantee a reliable and efficient electricity system. Passage of reliability legislation alone, however, will not address the interrelated issues in the electricity marketplace, which threaten the continued reliability of our power supply. Mandatory and enforceable reliability rules must be coupled with other actions if the availability of electric power is to be assured for the consumers of the nation.

## **II. Reliability Is a Product of Physical Infrastructure and Operating Prowess**

Reliability rules by themselves do nothing to improve poor reliability caused by inadequate generation supply and/or transmission infrastructure. A number of factors have contributed to the heightened concern over reliability. Most importantly, investment in transmission infrastructure (lines, poles and transformers) has not kept pace with the ever-increasing demands placed on it. EIA data shows that between 1990 and 1996, there was a decline of 5% in transmission investment relative to total energy production. NERC data also

indicates a 16% decline in miles of transmission lines per MW of summer demand for the 1989-1997 period. Further declines in transmission capacity have also been projected.

Declining infrastructure investment is understandable, given the lack of incentives to build, and the legislative and regulatory uncertainty that has surrounded the electricity industry over the past five years. Since 1995, the industry has had to grapple with FERC Orders No. 888, 889 and 2000, all of which are designed to achieve the separation of transmission from other electric utility assets. Some 24 states have also acted to require functional or structural unbundling and retail customer choice for electricity and, all the while, Congress has had restructuring legislation under consideration with a variety of bills introduced in both houses and advocated by the Administration. As a result, utilities today do not know for certain whether they will be permitted to operate their own transmission facilities, what the rate of return on these assets will be, or even who will have regulatory jurisdiction over transmission. To make matters worse, as the Department of Energy's Power Outage Study Team (POST) report noted, "in many cases, state and federal regulatory policies are not providing adequate incentives for utilities to maintain and upgrade facilities to provide an acceptable level of reliability." POST report at p. S-2. Given this regulatory and legislative uncertainty, utilities naturally are reluctant to make capital investments in assets that may never be recovered. Neither stand-alone reliability legislation nor FERC rules alone can solve the pressing need to encourage the construction and improvement of infrastructure – the fundamental bedrock from whence reliability arises.

It has been several years since a report was issued by the Electric System Reliability Task Force of the Secretary of Energy Advisory Board that stated federal legislation was required to assure that creation of a mandatory reliability system. Federal legislation was necessary to clarify the FERC's authority to enforce reliability rules. However, had the NERC reliability legislation been adopted, that alone would have not have sufficed to avoid the grave circumstances that have arisen in California. It is widely accepted that California's reliability problems stem from a lack of construction of new generating capacity and new transmission infrastructure. Incentives to construct either were lacking or significant roadblocks and disincentives to new construction were in place. Mandatory reliability rules

would not have corrected this root cause of faltering reliability. A well-reasoned comprehensive restructuring bill would achieve the goal of maintaining reliability while fostering a competitive electric marketplace that provides choice and benefits to consumers.

Regulation needs to be balanced and light-handed with a strong emphasis on creating signals that encourage beneficial investment in infrastructure and superior performance. Comprehensive legislation must encourage this goal as well. Given the growing threat to bulk power reliability, as demonstrated all too clearly by the recent developments in California, such comprehensive legislative action should be a priority for the 107th Congress.

### **III. There Is a Need to Update Existing NERC Reliability Legislative Language**

The consensus legislative proposal developed by NERC, passed last year by the Senate as Senate Bill 2071, and also incorporated into numerous other restructuring proposals did not fully address the perverse regulatory and legislative disincentives now confronting the electric industry. At a minimum, the amendments introduced by Rep. Wynn (D-MD) in H.R. 4941 are needed to incorporate unforeseen and very significant developments in the years since the NERC language was originally drafted, particularly to incorporate the role of RTOs espoused by FERC Order 2000. Moreover, there are alternatives which offer more flexibility and less prescriptive control that would be far better than Senate Bill 2071.

PSEG submits that the NERC legislative language, drafted long ago and before substantial changes in the industry structure occurred as a result of FERC Order 2000 and RTO formation initiatives, is stale, too prescriptive, and inflexible. Effective legislation would simply clarify and expand FERC reliability jurisdiction to all entities participating in the bulk power market and authorize and direct FERC to institute a reliability rulemaking. Moreover, by having FERC flesh-out the necessary details in a rulemaking, FERC will be in a position to effect any necessary future changes without the need to seek further legislative change should the electric industry evolve in unforeseen ways. It is inappropriate to burden an extremely busy Congress with issues that should be addressed by an administrative agency. Furthermore, Congress may not be able to enact amendments on a timely basis to address critical industry reliability issues.

While FERC has clear authority to authorize economic incentives to improve reliability, its authority under existing law to prescribe mandatory and enforceable reliability rules is unclear. To address this uncertainty, a comprehensive bill should bring non-jurisdictional entities under FERC's reliability wing. Furthermore FERC should oversee a standard development process that assures fairness and due process to all interested parties and is consistent with the reliability provisions of Order 2000 which vest RTO's with responsibility for reliability. The resultant FERC final rule would establish that RTOs have the responsibility to develop detailed reliability rules based on general NERC guidelines and institute the needed incentives and enforcement mechanisms to provide for construction of infrastructure to maintain and improve reliability.

PSEG submits that reliability standards development, implementation and enforcement should utilize the existing expertise of NERC and the Regional Councils or, where and when operational, FERC-approved RTOs. Much of the knowledge needed to oversee the reliability of the electricity system resides in these organizations. In Order 2000, FERC has directed that RTOs are responsible to maintain short-term reliability through operations and long-term reliability through regional and inter-regional planning. Although it may be necessary to modify the process and functions of these organizations in certain respects, a workable mechanism will need to take advantage of technical input that these organizations can provide.

A critical change in the current mechanism, however, would be the requirement that NERC and the Regional Councils and/or RTOs produce accredited reliability standards to an American National Standards Institute (ANSI) accredited process prior to implementation. Adoption of the ANSI –accredited process is in conformance with the direction of Congress expressed in the NTTAA of 1995 requiring that Federal agencies make use of voluntary consensus standards wherever possible. Such a process was further defined in the federal Office of Management and Budget Circular A-119 as one that has the following attributes:

- (i) Openness, (ii) Balance of interest, (iii) Due process, (iv) An appeals process, (v) Consensus which is defined as general agreement, but not necessarily unanimity, and included a process for attempting to resolve objections by interested parties, as long as all comments have been fairly

considered, each objector is advised of the disposition of his or her objection(s) and the reasons why, and the consensus body members are given an opportunity to change their votes after reviewing the comments.

ANSI-accredited procedures would allow broad participation in the development of standards by all interested parties and would provide a framework for rigorous review of proposed rules. The use of the ANSI-accredited procedures would also facilitate the adoption international standards utilizing existing and time-proven procedures accredited by ANSI and its Canadian and Mexican counterparts so that the same standards could be applied to interconnected portions of the electricity grid in the United States, Canada and Mexico.

The American National Standards Institute has served in its capacity as administrator and coordinator of the United States private sector voluntary standardization system for 80 years. ANSI does not itself develop American National Standards (ANSs); rather it facilitates development of standards by accrediting procedures for establishing consensus among qualified groups. The Institute ensures that its guiding principles -- consensus, due process and openness -- are followed by the more than 175 distinct entities currently accredited. All parties in interest are given the opportunity to be furnished copies of proposed standards and participate actively in the ANSI-facilitated consensus building process.

For decades, virtually all of the components of the electric generation, transmission and distribution infrastructure in the United States were manufactured, tested and installed in accordance with standards developed under an ANSI-accredited process. There is no reason to now deviate from this time-proven and highly successful way of developing standards. The ANSI-accredited process is well suited for developing reliability standards for the operation of the electric grid. It permits broad participation and assures that standards are developed fairly taking into account countervailing views. Also, ANSI is well established and independent. It would not be subject to undue influence of any industry segment. The ANSI-accredited process has been used with great success in other contexts in which industry consensus on technical issues is needed. Standards adopted by the telecommunication industry and the manufacturers of electronic products provide two obvious examples. PSEG



submits that the ANSI-accredited process would work well with respect to resolution of the kind of issues provided in the reliability context.

#### **IV. Interim Solutions to Establish Mandatory Reliability Rules**

Meanwhile, there are other models that can be utilized in the interim to foster reliability. The Western Systems Coordinating Council (WSCC) has a reliability rule and enforcement structure filed with FERC and in operation. The Mid-Atlantic Area Council (MAAC), using the WSCC as a model, is in the process of restructuring to extend reliability council participation and responsibility to all stakeholders with an independent board to assure fair and impartial governance. NERC is proceeding to implement its “Plan B” transition to a North American Electric Reliability Organization (NAERO) given the absence of any expectation of near term passage legislation. At its October 12-13, 2000 meeting, the NERC Board approved a plan to move forward with the transition of NERC to NAERO in advance of federal legislation, because the Board believed that it could not wait for legislation to begin to make the changes needed to maintain the reliability of the bulk power system.<sup>3</sup>

In doing so, NERC has recognized that there are measures that can be taken today to advance the mandatory reliability process until such time as comprehensive legislation is enacted. PSEG believes that the interim mechanism should make use of current (NERC and the NERC Regional Councils) and developing industry structures (RTOs) to the extent possible while creating an opportunity for meaningful participation through the ANSI-accredited process described above by all interested parties from all sectors of the electric power industry.

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<sup>3</sup> The Board approved the formation of three new Board-level task groups -- Governance, Funding, and Compliance -- to develop specific recommendations for consideration at the February 2001 Board meeting. Plan B has three essential elements: (a) Governance - To recommend the details of how governance could be turned over to the NERC Independent Trustees with a stakeholders committee available to provide advice and recommendations; (b) Funding - To consider a new funding mechanism for NERC that would incorporate the concept of user fees; (c) Compliance - To recommend a contract-based model in which Regional Councils enforce compliance with selected NERC and Regional standards, including the imposition of monetary penalties and other sanctions. NERC would have responsibility for oversight, coordination, and assessment of the effectiveness of the Regional programs.

Until comprehensive legislation is adopted, the enforcement of reliability would be best achieved by requiring independent system operators or control area operators (expected to be primarily RTOs in the near future) to file existing reliability standards with the Commission as part of the general terms and conditions of their tariffs. Acceptance of the reliability standards thus would be a condition of receiving transmission service in the respective regions. The Commission could further implement the reliability standards by conditioning the grant of power marketing certificates upon agreement to abide by reliability standards. At the present time, NERC lacks the authority to impose mandatory reliability standards. The duty to evaluate compliance and assess penalties would be delegated by the tariff to the RTOs (or to Regional Reliability Councils until RTOs become operational), and would contain an alternative dispute resolution process open to parties aggrieved by regional action with ultimate recourse to the FERC.

Under PSEG's proposed interim procedure, market participants will bind themselves to abide by the reliability provisions of the tariffs, ANSI-accredited standards and the RTO or Regional Council standards, including the enforcement and penalty provisions, by at least one of three possible means:

- (i) A market participant requiring transmission service would be obligated to execute a service agreement under a tariff containing an approved reliability provision;
- (ii) Any market participant owning a facility connected with the transmission grid, directly or indirectly, would be required as a condition of interconnection to join the relevant RTO or Regional Reliability Council and in so doing, agree to abide by all reliability provisions, and/or
- (iii) Any market participant not included in category (i) or (ii) above would be required, as a condition of receiving a power marketing certificate from the Commission, to abide by all relevant reliability provisions.

Each of these three contracts should also contain a reciprocity provision wherein the market participant would agree to abide by the reliability provisions of any other RTOs or Regional Reliability Councils affected by that market participant's activities.

In order to be eligible to participate and vote in RTO or Regional Reliability Council's processes, a market participant would be required to become a member of that RTO or Council. In order to participate and vote in NERC's processes, a market participant would need to become a member of at least one RTO or Regional Reliability Council. Market participants wishing to participate in the ANSI-accredited process will also be responsible for subscribing to ANSI-accredited standards distribution lists and for meeting ANSI-accredited process participation requirements.

The process described herein provides a means whereby the Commission, through the exercise of its existing authority over the rates, terms and conditions of transmission service in interstate commerce and through its existing authority to grant bulk power marketing certificates, can bridge the gap, for whatever period of time may be required, until the adoption of comprehensive Federal legislation addressing grid reliability. PSEG submits, moreover, that its proposal is workable and fair and may be an ultimate solution. It operates within the existing regulatory and statutory scheme and employs a transparent process that affords extensive due process rights at every stage to concerned entities. Parties will be able to participate at NERC and the RTOs or Regional Councils as suggested standards are developed, be afforded full participation in the ANSI-accredited process, be able to intervene, protest and/or comment when such standards are filed as part of the open access tariff at the FERC and once the tariff is in effect, avail themselves of the alternate dispute mechanism and, if still dissatisfied, file a complaint at the FERC seeking redress.

### **CONCLUSION**

Preservation of the reliability of the bulk power system must be a cornerstone of the transition to a more competitive electricity market. Creating an organization to develop mandatory reliability rules and providing for Federal oversight and enforcement of such mandatory rules is a key step, but is not an end in itself. Reliability measures cannot be isolated from other the steps needed to assure functional electricity markets across the nation. New rules alone will not be enough to assure that the lights stay on. Federal authorization for the creation of new rules must be coupled with other measures needed to speed the development of workably competitive electricity markets. Without the necessary elements to

spur investment in infrastructure -- to build, operate and maintain the both generation and transmission – the action proposed to rely upon a set of mandatory reliability rules, could prove embarrassing and empty when it comes to pass that such reliance on rules did not solve the problem.

Until comprehensive legislation addressing all aspects of electric power restructuring is enacted, the basic mechanism for addressing reliability issues should through the amendment of tariffs currently on file with the Commission in order to adopt regional standards.

### **Responses to Specific DOE Questions**

To assist DOE in its consideration of this issue, we are submitting the following specific comments on the questions:

**1. Is the existing arrangement of voluntary compliance with industry reliability rules sufficient to ensure reliability of the bulk power transmission system? If not, why not, and has reliability been jeopardized by violations of the existing bulk power reliability standards?**

The existing arrangement of voluntary compliance has worked well in the past and currently continues to be effective. To the extent that there have been some violations of the voluntary standards, they have been addressed. As detailed above in these comments, the Order 2000 initiative to form large Regional Transmission Organizations operating under FERC-approved tariffs and agreements is an ideal means to meld both market and reliability issues into a single organization that can efficiently and fairly strike a balance between these competing forces, and ensure observance of the rules. By simply ensuring that the RTO formation process proceeds to conclusion, reliability compliance will become enforceable.

The most critical, and absolutely essential, component of maintaining reliability is not a set of standards, rules, enforcement mechanism, or the like, which by themselves cannot ensure reliability. Only by implementation of the proper incentives to build and maintain infrastructure can reliability be achieved. The foundation of reliability is transmission

infrastructure and generation plant and equipment. Absent proper incentives to construct and keep the assets in good working order, reliability will deteriorate with or without legislation or regulation.

FERC must proactively commence and expedite proceedings to design and implement such incentives under its existing authority over the rates, terms and conditions of transmission service. Order 2000 recognized the desirability of offering incentives to participants in RTOs and this concept should be utilized in its fullest to promote and ensure investment needed to maintain and improve reliability. Such action by FERC will send a signal to the investment community that capital devoted to projects to improve and maintain reliability has the expectation of earning reasonable and competitive returns without undue or excessive risk.

## **2. What can FERC do under existing authorities to address reliability concerns?**

FERC has already taken the first steps by requiring RTOs to be responsible for maintaining short-term reliability and ensuring long-term reliability through the regional planning process. By requiring all participants and users of RTOs to execute an appropriate reliability assurance agreement as a condition of receiving transmission service and/or participating in the regional bulk power market, FERC can empower RTOs to adequately protect and ensure the reliability of the bulk power system. Even non-jurisdictional entities would be brought into the fold in order to be able to effectively participate and cooperate with other bulk power market participants. Moreover, under the opportunity to seek innovative rate treatment under Order 2000, incentives can be placed into RTO tariffs to encourage transmission and generation providers to maintain desired levels of reliability. Penalties and command and control reliability enforcement can be held in reserve should incentives not function as expected, with the RTO administering them with ultimate backstop resident with the FERC.

A number of factors contribute to the heightened concern over reliability. First, and most important, investment in transmission infrastructure (lines, poles and transformers) has not kept pace with the ever-increasing demands placed on it. For example, EIA data shows

that between 1990 and 1996, there was a decline of 5% in transmission investment relative to total energy production. NERC data also indicates a 16% decline in miles of transmission lines per MW of summer demand for the 1989-1997 period. Further declines in transmission capacity have also been projected.

Declining infrastructure investment is understandable, given the lack of incentives to build, and the legislative and regulatory uncertainty that has surrounded the electricity industry over the past five years. Since 1995, the industry has had to grapple with FERC Orders No. 888, 889 and 2000, all of which are designed to achieve the separation of transmission and other electric utility assets. Some 24 states have also acted to require functional or structural unbundling and retail customer choice for electricity, and all the while, Congress has had restructuring legislation under consideration. As a result, utilities today do not know whether they will be permitted to operate their own transmission facilities, what the rate of return on these assets will be, or even who will have regulatory jurisdiction over transmission in the future.

**3. If FERC has the authority to establish and enforce reliability standards, may FERC delegate such authority to a self-regulating reliability organization? Should it do so?**

FERC can and should request that NERC develop national general standards and the RTOs, within the general rules from NERC, develop the detailed rules and reliability assurance mechanisms appropriate to the characteristics of the RTO's specific region's needs. For regions where a RTO is not yet functional, the NERC Regional Councils can perform this function until such time as the RTO commences operation and merges the Regional Council into the RTO.

FERC can accomplish this in accordance with the wishes of Congress by a simple directive that NERC and its Affiliated Reliability Organizations and/or RTOs shall utilize a standards development process that satisfies the provisions of the National Technology Transfer and Advancement Act of 1995 ("Act"). Such process is defined in the federal Office of Management and Budget Circular A-119 as one that has the following attributes:

“(i) Openness, (ii) Balance of interest, (iii) Due process, (iv) An appeals process, (v) Consensus which is defined as general agreement, but not necessarily unanimity, and included a process for attempting to resolve objections by interested parties, as long as all comments have been fairly considered, each objector is advised of the disposition of his or her objection(s) and the reasons why, and the consensus body members are given an opportunity to change their votes after reviewing the comments.”

In the Act, Congress has seen fit to direct that Federal agencies make use of voluntary consensus standards whenever possible. NERC, NERC’s Regions and RTOs, by utilizing a process (such as ANSI-accreditation) meeting the above attributes, will allow for adoption of the reliability provisions without the need of a protracted and exhaustive agency rulemaking process. Yet, the interests of all stakeholders are fairly and comprehensively addressed through the procedures and due process protections described in OMB Circular A-119.

**4. Are there elements in CECA, or other electric reliability legislative language, which can, with or without modification, be used in a rulemaking?**

Little of the proposed legislation should be retained. The NERC language that gave rise to these bills attempted to preserve reliability through creation of a centralized, internationally-based private bureaucracy with unprecedented and largely unreviewable enforcement powers, essentially one private organization with sole authority over electric reliability. At the time (1998), with the United States electric industry balkanized into over 3300 electric utilities and 140+ control areas, this approach seemed to make sense.

The problem with the NERC language, other than its faith in centralized planning and control, is that it has been rendered obsolete and incompatible by subsequent promulgation of FERC Order 2000. Order 2000 addresses the balkanized grid problem by promoting the creation of a few, large Regional Transmission Organizations (RTOs). FERC charges RTOs with the *primary responsibility for electric grid reliability*, in the short term through operation and control, and in the longer term through responsibility for regional grid planning. The situation has changed from “no-one in charge” in 1997 to “who’s in charge – RTOs or

NERC,” a situation created by the out-dated and too inflexible provisions in the cited bills. The answer is obvious: large RTOs, that control and operate the electric grid under provisions of Order 2000, are in a better position to deliver reliability than the unprecedented private trade-association bureaucracy created by NERC’s language.

Meanwhile, there are other models that can be utilized in the interim to foster reliability. The Western Systems Coordinating Council (WSCC) has a reliability rule and enforcement structure filed with FERC and in operation. The Mid-Atlantic Area Council (MAAC), using the WSCC as a model, is in the process of restructuring to extend reliability council participation and responsibility to all stakeholders with an independent board to assure fair and impartial governance. NERC is proceeding to implement its “Plan B” transition to a North American Electric Reliability Organization (NAERO) given the absence of any expectation of passage of that legislation in the near term. At its October 12-13, 2000 meeting, the NERC Board approved a plan to move forward with the transition of NERC to NAERO in advance of federal legislation, because the Board believed that it could not wait for legislation to begin to make the changes needed to maintain the reliability of the bulk power system<sup>4</sup>. In doing so, NERC has recognized that there are measures that can be taken today to advance the mandatory reliability process until such time as comprehensive legislation is enacted.

**5. What should the relationship be between Regional Transmission Organizations, as advanced in FERC Order No. 2000, 65 FR 809 (January 6, 2000), FERC Stats. & Regs. P31, 089 (2000), and an Electric Reliability Organization as proposed in CECA?**

Order 2000 recognizes an important - although limited - role for NERC and its successor organizations to establish reliability standards. Order 2000 anticipates that implementation of NERC-established standards may prevent an RTO from meeting its obligation to provide reliable, non-discriminatory transmission service. When such conflicts arise, Order 2000 vests

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<sup>4</sup> The Board approved the formation of three new Board-level task groups -- Governance, Funding, and Compliance -- to develop specific recommendations for consideration at the February 2001 Board meeting. Plan B has three essential elements: (a) Governance - To recommend the details of how governance could be turned over to the NERC Independent Trustees with a stakeholders committee available to provide advice and recommendations; (b) Funding - To consider a new funding mechanism for NERC that would incorporate the concept of user fees; (c) Compliance - To recommend a contract-based model in which Regional Councils enforce compliance with selected NERC and Regional standards, including the imposition of monetary penalties and other sanctions. NERC would have responsibility for oversight, coordination, and assessment of the effectiveness of the Regional programs.



with the RTO the authority to identify the offending NERC standard and report the standard to the Commission. Once the Commission receives such notification from a RTO, Order 2000 does not constrain how the Commission might respond, but such a response might include directing the RTO to ignore the NERC standard, or directing the RTO to revise its operating procedures to avoid the conflict.

In light of Order 2000, NERC will have an important role to play as a reliability standard-setting body in the new structure, but that operations and enforcement should be carried out in the market. ISOs and RTOs will be in the best position to ensure reliability and should continue to have responsibility for operations, reliability and planning. These entities will have the knowledge and experience to identify reliability issues within the transmission system and adopt policies to address problems, including market-based solutions.

Under the proposed legislation, one of the key roles of NERC is to enforce sanctions and penalties against all users of the bulk-power system, including market participants within an RTO. This suggests the likelihood that such market participants will face duplicative and potentially conflicting enforcement actions by the two entities. For example, an RTO could give an operating order to a resource to increase its output based on the RTO's rules. At the same time, the NERC could issue a different set of operating instructions to the same resource. This situation could lead to confusion, litigation, and a degradation in reliability. The possibility of such enforcement actions appears to conflict with the exclusivity provisions of Order 2000. On the other hand, if the NERC's enforcement powers are limited to actions against the system operator and do not extend to actions of market participants within the RTO, the redundancy of having one FERC supervised body enforcing standards against another FERC supervised body is only exacerbated. Finally, the possibility of conflicting enforcement actions is likely to be seen as anti-competitive and could lead to higher costs to consumers.

This conflict is easily resolved by having NERC continue its traditional role of (a) developing national standards through a process meeting the requirements of OMB Circular A-119 and (b) gathering and analyzing data on reliability to report to DOE and FERC.

Implementation of the general rules including enforcement, with recognition of bona fide important regional differences also developed through an OMB Circular compliant process, would take place at the NERC regional level, authorized by FERC-filed tariffs, until such time as the NERC Regions are able to be merged into operational RTOs that will then perform the regional assessment and enforcement duties in accordance with the RTO FERC-filed tariffs.

**6. How should the responsibilities and roles of FERC and the States be addressed in a rulemaking?**

The role of the states should be one of active development and enforcement of reliability standards at the retail level, both for distribution companies and energy marketers. At the bulk power level, the ANSI-accredited process that should be utilized for standards development provides the opportunity for meaningful participation by the states in the reliability rule development process, both at the national level for general rules and at the regional level for more detailed specifics. In the ANSI-accredited process, the States have the same opportunities to participate as any other interested stakeholder.

**7. Recognizing the international nature of the interconnected transmission grid, how could implementation of mandatory reliability standards be coordinated with Canada and Mexico?**

The RTOs already have the obligation to coordinate with adjoining regions. Moreover, with respect to the important function of standards development, ANSI for many years has participated with its counterparts in Canada and Mexico to ensure that uniform, consistent standards are established in accordance with international requirements. Utilization of the ANSI-accredited process means that there is no need or value in designing a novel or new approach to international standards development. The Standards Council of Canada works closely with ANSI to ensure international consistency of standards. Similar coordination can be accomplished with Mexican standards authorities. By active involvement in standards setting through these already existing processes, interested entities across the borders will have the same rights and opportunities to participate in the standards development process as domestic entities.

Respectfully submitted,

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